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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/508,463	03/10/2000	RAINER BERGSTROM	30-516	4731

7590 01/15/2003

NIXON & VANDERHYE  
1100 NORTH GLEBE ROAD  
8TH FLOOR  
ARLINGTON, VA 22201-4714

EXAMINER

PRATT, CHRISTOPHER C

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/15/2003

*12*

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/508,463	BERGSTROM ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Christopher C Pratt	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2002.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-23 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some \* c) ☐ None of:
    - 1. ☐ Certified copies of the priority documents have been received.
    - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's amendments and accompanying remarks filed 10/25/02 have been entered and carefully considered. Applicant's amendment is not found to patentably distinguish the claims over the prior art and Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harpell et al (5198280), as set forth in the last two actions.

Applicant has amended the claims to include the limitation of a plastic plate and to specify that the layers are bonded together, as distinguished from mere stitching. Harpell teaches the use of "planar bodies" formed of plastic laminated to the fabric layers (col. 16, lines 17-20). It is the examiner's position that these planar bodies are equivalent to applicant's plastic plate.

Harpell also teaches that the fabric layers are bonded together by heat or adhesive (col. 12, lines 7-10).

Applicant argues that the claim 10 requires the laminated fabric layers to be mounted in a vessel wall. This argument is not commensurate in scope with the claims.

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Claim 10 reads: a panel "for" a vessel wall and "when" mounted in said vessel wall. The claim never positively states that the invention actually is mounted in a vessel wall. As such, said recitation only amounts to an intended use and is not given patentable weight because the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The fabric layers of Harpell are capable of being mounted in a vessel wall.

Moreover, Harpell teaches that the materials of the invention are known to be used as structural members of helicopters and other military equipment and vehicle panels (col. 1, lines 15-19). This would clearly suggest to the skilled artisan that the invention of Harpell could be practiced as a vehicle panel. The skilled artisan would have been motivated to utilize the invention of Harpell as a vehicle panel in order to extend the functionality and commercial applications of said invention. Applicant argues that Harpell requires its invention to retain flexibility and thus teaches away from such uses. This is not persuasive because Harpell teaches that flexibility can be sacrificed in applications where increased ballistic resistance is required (col. 13, lines 35-40 and col. 10, lines 55-57). Also Harpell only requires flexibility to be maintained in areas where movement is needed. For example, if the invention is used as a ballistic vest then flexibility must be maintained in the arm regions so that a wearers movement is not

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restricted. In areas where this movement is not a concern the invention can be made strong and rigid enough to break and flatten missiles (col. 12, lines 50-60).

Applicant argues that Harpell does not teach applicant's claimed optimum angle of 55-75. However, applicant concedes that Harpell does teach an angle range of 45-90. It is the examiner's position that applicant's claimed range is not sufficiently narrow to show a criticality, which was not previously possessed by Harpell.


### **Conclusion**

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher C. Pratt  
January 9, 2003

  
CHERYL A. JUSKA  
PRIMARY EXAMINER